

REMARKS/ARGUMENTS

Applicants respectfully request entry of this Amendment, reconsideration of this application, and reconsideration of the Final Office Action dated July 29, 2005.

I. General Remarks Regarding the Content of this Amendment

Upon entry of this Amendment, claims 1-9, 11-13, 15-18, 20-26, 28-32, 34-37, and 39 will remain pending in this application. Claims 10, 14, 19, 27, 33, 38, and 40 are canceled without prejudice or disclaimer by this Amendment. Also, through this Amendment, Applicants have amended various claims to clarify the structure associated with the claimed devices. Support for the changes is readily evident from the original claims and specification. No new matter is included in this Amendment, and no additional claim fees are due as a result of this Amendment.

While Applicants do not agree with or acquiesce in the various grounds of rejection raised by the Office in the July 29, 2005, Final Office Action, Applicants have presented various claim amendments in an effort to expedite prosecution and to facilitate allowance of this application. These changes are made without prejudice or disclaimer, and Applicants reserve all rights with respect to the originally and/or previously claimed subject matter, including the right to pursue claims of the same or similar scope in the future (*e.g.*, in a continuing application).

Applicants acknowledge, with appreciation, the Examiner's indication that original claims 8 and 25 contain patentable subject matter. In view of this Amendment and the remarks that follow, Applicants respectfully submit that all of the claims in this application stand in condition for immediate allowance.

II. Applicants' Claims Comply with the Requirements of 35 U.S.C. § 112, ¶ 2

The Office rejected claims 1-33, 38, and 40 as allegedly indefinite. Applicants respectfully traverse this rejection and request reconsideration.

While Applicants believe that the original and previously presented claims fully complied with the requirements of 35 U.S.C. § 112, in order to expedite prosecution and to facilitate allowance of this application, independent claims 1 and 15 have been amended herein to clarify the structure of the claimed element.

Also, as to claims 10, 14, 19, 27, 33, 38, and 40, while Applicants do not believe that these claims were deficient in any way in their original or previous forms, in order to expedite prosecution and to facilitate allowance of this application, Applicants have canceled these claims without prejudice or disclaimer. Therefore, these rejections are moot.

In view of the foregoing, Applicants respectfully submit that the claims in this application are definite and fully comply with the requirements of 35 U.S.C. § 112, ¶ 2. Withdrawal of this rejection is respectfully requested.

III. Applicants' Claims Patentably Distinguish from the Cited Art

A. Applicants' Claims

Applicants' claim 1 recites an element having: (a) a bimodal spring member including an exterior edge, wherein the bimodal spring member is capable of maintaining a first stable position at which the exterior edge is located at a first position and a second stable position at which the exterior edge is located at a second position; and (b) an arm extending from the exterior edge of the bimodal spring member, wherein the arm is located at an open position when the exterior edge is located at the first position and at a closed position when the exterior edge is located at the second position. Independent claim 15 recites a piece of footwear including a foot-engaging element having a bimodal spring member, exterior edge, and arm features as described above. Independent method claims 34 and 39 define engaging methods that use bimodal spring members having exterior edges and arms extending therefrom that are moved between open and closed positions.

As will be described in more detail below, the art cited by the Office does not teach or suggest bimodal spring members, foot-receiving devices including bimodal spring members, and/or methods including use of bimodal spring members as set forth in Applicants' claims.

B. The Ogle Patent Does Not Anticipate Applicants' Claims

The Office rejected claims 1-6, 9-18, 20, 21, 23, 26-29, 32-35, and 37-40 as allegedly anticipated by Ogle, U.S. Patent No. 5,282,327 (hereinafter "Ogle"). Applicants respectfully traverse this rejection and request reconsideration.

In the Office Action, the Examiner asserts that elements 16 and 36 in Ogle constitute the claimed bimodal spring member. These elements, as shown in Fig. 3 of Ogle, are merely conventional spiral springs, not bimodal spring members capable of changing between a first stable position and a second stable position as recited in Applicants' claims. Moreover, nothing in Ogle teaches or remotely suggests inclusion of a bimodal spring member including an exterior edge and an arm extending from the exterior edge and movable between open and closed positions in the manner recited in Applicants' claims.

Accordingly, Applicants respectfully submit that the Ogle patent clearly fails to anticipate the claimed invention. Withdrawal of this rejection is respectfully requested.

C. The Dorr Patent Does Not Anticipate Applicants' Claims

The Office rejected claims 1-6, 9-13, 15-18, 20, 21, 23, 26-29, 32, 34, 35, and 38-40 as allegedly anticipated by Dorr, U.S. Patent No. 2,069,752 (hereinafter "Dorr"). Applicants respectfully traverse this rejection and request reconsideration.

In the Office Action, the Examiner asserts that elements 28 and 29 in Dorr constitute the claimed bimodal spring member. These elements, as shown in Fig. 4 of Dorr, are merely conventional torsional springs, not bimodal spring members including exterior edges and arm members extending therefrom as recited in Applicants' claims. Nothing in Dorr teaches or remotely suggests inclusion of bimodal spring members of the types recited in Applicants' claims.

Accordingly, Applicants respectfully submit that the Dorr patent clearly fails to anticipate the claimed invention. Withdrawal of this rejection is respectfully requested.

D. The Balut Patent Does Not Anticipate Applicants' Claims

The Office rejected claims 1-7, 9-13, 15-18, 20, 21, 23, 24, 26-30, 32, 34, 35, 37, and 39 as allegedly anticipated by Balut, U.S. Patent No. 2,693,039 (hereinafter "Balut"). Applicants respectfully traverse this rejection and request reconsideration.

In the Office Action, the Examiner asserts that element 28 in Balut constitutes the claimed bimodal spring member. Elements 28, as shown in Fig. 5 of Balut, are merely conventional connecting springs, not bimodal spring members including an exterior edge and an arm extending therefrom as recited in Applicants' claims. Nothing in Balut teaches or remotely suggests inclusion of bimodal spring members of the types recited in Applicants' claims.

Accordingly, Applicants respectfully submit that the Balut patent clearly fails to anticipate the claimed invention. Withdrawal of this rejection is respectfully requested.

E. The Neiley Published Patent Application Does Not Anticipate Applicants' Claims

The Office rejected claims 1-6, 9-12, 15-23, 26-29, 34-37, and 39 as allegedly anticipated by Neiley, U.S. Patent Application Publication No. 2002/0174568 (hereinafter "Neiley"). Applicants respectfully traverse this rejection and request reconsideration.

In the Office Action, the Examiner asserts that Fig. 6 of Neiley illustrates the claimed bimodal spring element. The discussion of Fig. 6 of Neiley, at Paragraph 61 of the Publication, however, does not mention or identify any such "spring" element, much less a bimodal spring member including an exterior edge and an arm extending therefrom, as recited in Applicants' claims. The only "spring" identified in the Neiley patent is the conventional torsional spring element 82 described in connection with Fig. 13. Clearly spring element 82 is not a bimodal spring member of the type recited in Applicants' claims.

Accordingly, Applicants respectfully submit that the Neiley patent clearly fails to anticipate the claimed invention. Withdrawal of this rejection is respectfully requested.

F. The Miller Patent Does Not Anticipate Applicants' Claims

The Office rejected claims 1-3, 5, 6, 9, 10, 15-17, 20, 23, 26-29, and 31 as allegedly anticipated by Miller, U.S. Patent No. 2,746,178 (hereinafter "Miller"). Applicants respectfully traverse this rejection and request reconsideration.

In the Office Action, the Examiner asserts that Figs. 4 and 7 in Miller illustrate the claimed bimodal spring member. Again, these elements in Miller are merely conventional spring structures, not bimodal spring members including an exterior edge and an arm extending therefrom as recited in Applicants' claims. Nothing in Miller teaches or remotely suggests inclusion of a bimodal spring member of the type recited in Applicants' claims.

Accordingly, Applicants respectfully submit that the Miller patent clearly fails to anticipate the claimed invention. Withdrawal of this rejection is respectfully requested.

G. Conclusion Regarding Art Rejections

For the reasons described above, Applicants respectfully submit that the present claims patentably distinguish from the cited art. Withdrawal of these rejections and allowance of the pending claims are earnestly solicited.

IV. Conclusion

If the Examiner believes that a telephone conference or a personal interview will be useful to advance the prosecution of this application and/or to place the application in condition for allowance, she is invited to contact the undersigned attorney by telephone.

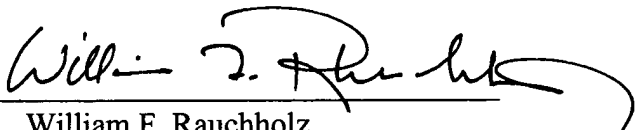
Separate Request for Continued Examination, Petition for Extension of Time, and Fee Transmittal forms are included with this Amendment. Applicants believe that no further fees are due for entry and consideration of this Amendment. If, however, the Office determines that any additional fees are required, such as fees under 37 C.F.R. §§ 1.16 or 1.17, or if an extension of time is necessary that is not accounted for in the papers filed with this Amendment, the Commissioner is authorized to debit our Deposit Account No. 19-0733 for any necessary fees, including any necessary extension fees or other fees needed to maintain the pendency of this application.

Application of John Hurd, et al. – U.S. Patent Appln. No. 10/691,027

All rejections having been addressed, Applicants respectfully submit that this application is in condition for immediate allowance and respectfully solicit prompt notification of the same.

Respectfully submitted,

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